

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

CLARENCE OTWORTH,

Plaintiff,

File No. 1:11-cv-206

vs.

WILLIAMS, HUGHES & COOK, PLLC,
a corporation, and HAROLD F. CLOSZ, III,
SHON A. COOK, SUSAN M. FRANKLIN,
Individuals,

Hon. Gordon J. Quist
United States District Judge

Defendants.

Clarence M. Otworth, *In Propria Persona*
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Twin Lake, MI 49457
Telephone: 231-292-1065

Theodore N. Williams, Jr. (P32291)
Eric C. Grimm (P58990)
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**DEFENDANTS' MOTION AND SUPPORTING MEMORANDUM FOR AN
EXTENSION OF TIME, TO ANSWER OR OTHERWISE MOVE UNDER RULE 12**

NOW COME ALL DEFENDANTS, through counsel, under FED. R. CIV. P. 6(b)(1)(A), and respectfully move for an extension of time for each Defendant to file an Answer, or for each of them otherwise to file a motion, as permitted by FED. R. CIV. P. 12(b).

The exception to the extension-of-time rule, set forth in Fed. R. Civ. P. 6(b)(2), does not apply to the deadline for filing an answer or otherwise moving, as permitted in Rule 12. The deadline to answer or move, unless extended by the Court, would be Monday, May 9, 2011. All

defendants respectfully request that the May 9, 2011, deadline be extended by not less than sixty (60) days, at least until Friday, July 8, 2011.

Counsel for Defendants on two (2) separate occasions, most recently on April 21, 2011, reasonably and in good faith sought to contact the Plaintiff, Clarence Otworth, by telephone, in an effort to obtain his concurrence. Despite reasonable efforts, we were unsuccessful in our attempts to contact him.

Respectfully submitted,

Dated: April 21, 2011

/s/Eric C. Grimm
Eric C. Grimm (P58990)
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COUNSEL FOR DEFENDANTS.

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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
DEFENDANTS' MOTION FOR AN EXTENSION OF TIME,
TO ANSWER OR OTHERWISE MOVE UNDER RULE 12**

NOW COME ALL DEFENDANTS, through counsel, under FED. R. CIV. P. 6(b)(1)(A), and respectfully move for an extension of time for each Defendant to file an Answer, or for each of them otherwise to file a motion, as permitted by FED. R. CIV. P. 12(b).

The exception to the extension-of-time rule, set forth in Fed. R. Civ. P. 6(b)(2), does not apply to the deadline for filing an answer or otherwise moving, as permitted in Rule 12. Thus,

the Court has authority, and discretion, to grant such an extension of time. The deadline to answer or move, unless extended by the Court, would be Monday, May 9, 2011.

Rule 6(b)(1)(A) says:

(b) **Extending Time.**

(1) **In General.**

When an act may or must be done within a specified time, the court may, for good cause, extend the time:

(A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires

Here, the Defendants' motion is timely made, because it is being filed more than two weeks in advance of the May 9, 2011, deadline. All defendants respectfully request that the May 9, 2011, deadline be extended by not less than sixty (60) days, at least until Friday, July 8, 2011.

Good cause exists for such an extension of time, because the preparation and filing of one or more Rule 12 motions (*i.e.*, we intend to file motions under Rule 12(b)(1) and 12(b)(6), to dismiss for lack of subject-matter jurisdiction, and for failure to state a claim upon which relief can be granted), would require an expensive and time-consuming effort on the part of Defendants' counsel. Such an investment of resources appears to be unnecessary, because a Report and Recommendation prepared by Magistrate Judge Carmody (Doc. Ent. 12), already is on file, in which Magistrate Judge Carmody recommends dismissal of this entire action.

The issues already have been adequately briefed, and Plaintiff already has had the opportunity to have his say in opposition to the Magistrate Judge's Report and Recommendation. See Doc. Ent. 15, 16, 17. Thus, the proposed dismissal of this entire action already is "teed-up," and ripe for a decision by this honorable Court.

It is respectfully submitted that the most efficient approach is for the Court to rule on the issues that already have been raised and adequately addressed, before any of the Defendants should be forced to expend the additional resources to file one or more Rule 12 motions.

Moreover, Defendants already have made several suggestions that the Court (on its own motion) issue a show-cause order, directing the Plaintiff to explain why sanctions should not be imposed. In the event that monetary sanctions were to be imposed, then it would be to Mr. Otworth's own detriment for the Defendants to have spent additional resources, filing Rule 12 motions. Defendants respectfully suggest that the best approach, under the circumstances, is to keep costs (and, hence, the amount of any potential sanctions against Otworth) low – at least, to the extent that certain tasks can be delayed until after the Court has had a chance to rule on the Magistrate Judge's Report and Recommendation.

CONCLUSION

For the reasons set forth above, Defendants respectfully pray that the deadline for each Defendant to file an answer (or alternatively, to file a Rule 12 motion), be extended from Monday, May 9, 2011, by not less than sixty (60) days, at least until Friday, July, 8, 2011. Defendants also pray for such other and further relief that the Court may deem just and proper.

Respectfully submitted,

April 21, 2011

/s/Eric C. Grimm
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COUNSEL FOR DEFENDANTS.

CERTIFICATE OF SERVICE

I certify that the foregoing Defendants' Motion and Supporting Memorandum For An Extension of Time, was filed through the Court's ECF system, on April 21, 2011. Because the following party is not participating in the ECF system, the Defendants' Motion and Supporting Memorandum For An Extension of Time, is being served on him, by First Class Mail, postage prepaid, on April 21, 2011:

Clarence M. Otworth, *In Propria Persona*
187 E. Daniels Road
Twin Lake, MI 49457

Respectfully submitted,

/s/ Eric C. Grimm
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